



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF A-E-C-O-M-, INC.

DATE: APR. 10, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a medical school and research institution, seeks to classify the Beneficiary as an individual of exceptional ability in the sciences, arts, or business, or as a member of the professions holding an advanced degree, under the second-preference, immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This second preference classification makes immigrant visas available to foreign nationals with a degree of expertise significantly above that normally encountered in the sciences, arts, or business or an academic degree above that of baccalaureate. The Petitioner also seeks designation under 20 C.F.R. § 656.5, Schedule A, Group II. Schedule A, Group I as well as Group II, is comprised of certain occupations for which the Department of Labor (DOL) has determined there are not sufficient United States workers who are able, willing, qualified, and available, and that the employment of these foreign nationals will not adversely affect the wages and working conditions of similarly employed United States workers. *Id.*

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary satisfied at least two of the seven evidentiary criteria at 20 C.F.R. § 656.15(d)(1)((i)-(vii)). On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary meets three of the seven listed criteria and possesses the requisite widespread acclaim and international recognition in her field. After review of the Petitioner's brief and additional evidence, we issued a Request for Evidence (RFE), to which the Petitioner timely responded.

Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

Second preference immigrant visas are available for qualified individuals who are advanced-degree professionals or who, because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2) of the Act.

Every petition under this classification must include one of the following three documents: (1) an individual labor certification from the Department of Labor, (2) an application for Schedule A

designation, or (3) documentation to establish that the beneficiary qualifies for one of the shortage occupations in the [REDACTED] 8 C.F.R. § 204.5(k)(4)(i).

Schedule A, Group II designation requires that a petitioner submit evidence of the beneficiary's exceptional ability in the sciences or arts as demonstrated by widespread acclaim and international recognition from recognized experts in his or her field. 20 C.F.R. § 656.15(d)(1). In addition, the petitioner must provide evidence meeting at least two of seven criteria (for example awards, memberships, published material, and contributions). 20 C.F.R. § 656.15(d)(1)((i)-(vii). Beyond demonstrating widespread acclaim and international recognition, the documentation presented must show that the position the beneficiary has worked in the year prior to filing and the one sought both require an individual of exceptional ability. *Id.* As with any filing for an employment-based immigrant that requires an offer of employment, this petition must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. 8 C.F.R. § 204.5(g)(2).

## II. ANALYSIS

The Petitioner indicated on ETA Form 9089, Application for Permanent Employment Certification, that it seeks to employ the Beneficiary as a survey research coordinator at an annual wage of \$65,000. Part H of the Form 9089 reflects that the position requires a master of public health degree, in addition to 24 months of experience in the job offered.

The Director did not contest that the Beneficiary, who possesses a qualifying master of public health degree, is a member of the professions holding an advanced degree, but denied the petition because the Petitioner did not establish that the Beneficiary met any of the seven listed criteria under the Schedule A, Group II regulations. For the reasons discussed below, we agree that the record does not establish that the Beneficiary satisfies any of the evidentiary criteria. In addition, we find that the Beneficiary does not possess the widespread acclaim and international recognition required for Schedule A, Group II designation, and does not meet the minimum requirements of the offered position.

### A. Experience Requirements

A petitioner must establish a beneficiary's possession of all job requirements by a petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). In evaluating a beneficiary's qualifications, USCIS must examine the job offer portion of a labor certification to determine the minimum requirements of an offered position. USCIS may neither ignore a certification term, nor impose additional requirements. *See, e.g., Tongatapu Woodcraft Haw., Ltd. v. Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984) (holding that the immigration service "may make a *de novo* determination of whether the alien is in fact qualified to fill the certified job offer").

Our RFE noted that lines H.6 and H.10 of the Form 9089 indicates that the position of survey research coordinator requires at least 24 months of experience in the job offered, and that experience in an alternate occupation is not acceptable. The Petitioner indicates in Part K that the Beneficiary has been employed as a research coordinator, with the same duties as the survey research coordinator position, since April 18, 2016. The petition was filed on April 10, 2017, and the record establishes the Beneficiary's slightly less than 12 months of qualifying experience as a research coordinator. Part K of the Form 9089 states that the Beneficiary was employed with the Petitioner in a different position, study coordinator, for four years prior to beginning her current job. Therefore, we requested additional evidence of the Beneficiary's satisfaction of the minimum job requirements as stated on the Form 9089.

In response to the RFE, the Petitioner presents two alternative arguments. First, the Petitioner asserts that the Beneficiary qualifies for the survey research coordinator position through her employment as both a study coordinator and a research coordinator. The Petitioner states that this is because the study coordinator position is junior to the research coordinator, and that the two share common core responsibilities. While the two positions do share some common duties, such as coordinating public outreach and developing public health materials, there are several duties of the research coordinator position that are not present in the study coordinator position.

In particular, the involvement in the publication of scientific research results, grant administration, and the training and supervision of laboratory technicians, set the research coordinator position apart from the study coordinator position such that they cannot be considered to be the same position. While the Petitioner insists that both positions fall within the survey researcher O\*NET code of 19-3022, these more technical duties only found in the research coordinator position fall within the O\*NET code for epidemiologists, 19-1041. For these reasons, the experience gained by the Beneficiary as a study coordinator does not qualify her for the offered position.

Second, the Petitioner's submission of an unsigned, undated page 3 of Form 9089, which now includes the study coordinator position as an acceptable alternative for the job experience requirement of 24 months, cannot be considered as an acceptable amendment to the petition. Even if the Petitioner had submitted a properly completed Form 9089 on appeal, 20 C.F.R. § 656.11(b) prohibits modifications to any application for permanent labor certification submitted after July 16, 2007.

For the reasons stated above, we find that the Beneficiary does not possess the required 24 months of experience in the job offered.

#### **B. The Field for Which Certification is Sought**

In order to qualify for Schedule A Group II designation, the Petitioner must submit evidence to establish that the Beneficiary has been accorded widespread acclaim and international recognition in his or her field in the sciences or arts. The regulation at 20 C.F.R. § 656.5(b)(1) defines "science or

art” as “any field of knowledge and/or skill with respect to which colleges and universities commonly offer specialized courses leading to a degree in the knowledge and/or skill.”

Prior to earning her Master of Public Health degree in 2011, the Beneficiary earned a Ph.D. in Chemical Sciences from [REDACTED] University in [REDACTED] Spain, and spent several years working as a researcher focused in the field of neurology. In his decision, the Director determined that the Beneficiary could not rely upon her work as a researcher in the field of neurology to satisfy the requirements for the criteria regarding her participation as a judge of the work of others under 20 C.F.R. §656.15(d)(1)(iv), original contributions of major significance under 20 C.F.R. § 656.15(d)(1)(v), and authorship of published scientific or scholarly articles under 20 C.F.R. § 656.15(d)(1)(vi).

On appeal, the Petitioner resubmitted many of the same letters that had been provided in response to the Director’s Notice of Intent to Deny, and in response to our RFE included complete copies of some letters which were incomplete when originally submitted. In general, these letters assert that a) laboratory techniques used in molecular biology and biochemistry research are integral to the field of epidemiology, which is a subset of public health, and b) the Beneficiary’s knowledge of these techniques is essential to her work as a survey research coordinator for the Petitioner. Specifically, [REDACTED] principal investigator for the research project that funds the Beneficiary’s work, recites a description of the emerging field of molecular epidemiology that appeared in a scientific journal in 1994, and describes the Beneficiaries’ duties in supervising and training medical technicians in the collection and analysis of biological samples used as the basis of epidemiological research. [REDACTED] also employed by the Petitioner, states that the Beneficiary has used her knowledge of laboratory techniques in several ways which have “had an extraordinary impact on the quality of the data collected,” and summarizes that she is “irreplaceable” to the Petitioner’s research program due to “her unique combination of qualifications in biochemistry and molecular biology, in social science and epidemiology, in community outreach and involvement, combined with her Spanish language skills.” 3.

Each of the seven criteria under 20 C.F.R. § 656.15(d)(1) includes the phrase “in the field for which certification is sought.” As described on Form 9089, the position of survey research coordinator, requiring at least a master in public health degree and 24 months of experience in the same job offered, falls squarely into the field of public health and the allied field of epidemiology. The duties listed there, as well as the posted notice of filing, are primarily related to public health, such as community outreach and the development of health education materials.

The record establishes that the Beneficiary’s previous work as a scientist, focusing on neurology research, has provided her with laboratory skills that are applicable to the duties described by [REDACTED]. However, it does not follow that this previous research, including six years as a postdoctoral fellow in the Petitioner’s Department of Neurology, can therefore be considered to be in the field of public health. This conclusion also is supported by letters from the Beneficiary’s colleagues in the United States and Spain, who identify the two phases of the Beneficiary’s career separately. For example, [REDACTED] who leads the

Petitioner's Department of Pediatrics, notes the Beneficiary's "more than four years of epidemiological expertise."

The Petitioner also presents evidence from [REDACTED] University's website regarding its master in public health program which indicates that a single course in the curriculum includes biological topics intended to "give[s] students a basic knowledge of a few major concepts relevant to public health." However, this is only one of 18 modules that students must study as part of the public health program, and the course description minimizes the depths to which these topics are covered. The totality of the evidence in the record does not support the Petitioner's contention that the Beneficiary's work as a researcher in the field of neurology should be considered as also being in the field of public health or epidemiology. Therefore, we agree with the Director that, in analyzing the evidence submitted under the relevant evidentiary criteria, we may only consider evidence that directly relates to the field for which certification is sought, public health or the allied field of epidemiology.

#### C. Evidentiary Criteria for Schedule A, Group II

To establish the Beneficiary's eligibility for Schedule A, Group II labor certification, the Petitioner must demonstrate, among other things, that the Beneficiary qualifies as an individual of exceptional ability in the sciences in accordance with the regulatory provisions found at 20 C.F.R. § 656.15(d)(1). We have reviewed all of the evidence in the record of proceedings, and find that the record does not establish that the Beneficiary has met at least two of the seven evidentiary criteria found at 20 C.F.R. § 656.15(d)(1)(i)-(vii).

*Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which certification is sought. 20 C.F.R. § 656.15(d)(1)(iv)*

The Petitioner submits evidence under this criterion that shows the Beneficiary's review of manuscripts submitted for publication in scientific journals on two occasions. One instance of her work as a reviewer is supported by a letter from [REDACTED] University in [REDACTED] Spain, who states that the Beneficiary served as a reviewer for a single article submitted to the journal [REDACTED] in 2005 for which he served as a guest editor. The other instance of her activity as a reviewer is documented by a letter from [REDACTED] co-founder and publisher of [REDACTED] who indicates that the Beneficiary reviewed a manuscript titled [REDACTED]

In his denial, the Director noted that since [REDACTED] is not a current member of the editorial board of this journal, his letter could not be considered as "independent evidence." We disagree with the Director's decision in that regard, and find that [REDACTED] letter establishes by a preponderance of the evidence that the Beneficiary reviewed a manuscript submitted

to this journal. However, the remaining issue is whether either of these articles are in the same or an allied field of public health, the field for which certification is sought.

On appeal, the Petitioner again cites to the letters from the Beneficiary's colleagues which describe her duties and their basis in the biochemistry and molecular biology fields in which she previously conducted research. However, while we acknowledge the evidence of record which explains that public health research in general may employ laboratory techniques in common with the fields of biochemistry and molecular biology, this evidence does not support a finding that the particular manuscripts submitted for review were based to any degree on research in the field of public health or an allied field. In addition, while the evidence relating to [REDACTED] indicates that it publishes postdoctoral research in general, the publisher's website for [REDACTED] indicates that the journal is tightly focused in the fields of pharmacology and biochemistry.<sup>1</sup> Therefore, the evidence does not establish that the Beneficiary has served as a judge of the work of others in the field of public health or epidemiology. This criterion has not been met.

*Evidence of the alien's original scientific or scholarly research contributions of major significance in the field for which certification is sought. 20 C.F.R. § 656.15(d)(1)(v)*

The Petitioner submitted evidence of the Beneficiary's name being listed on a patent application apparently submitted to the Spanish patent authorities, but did not provide a certified translation of this document. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims. Also, we note that while the Petitioner submitted a letter from [REDACTED] in [REDACTED] Spain, which stated that several biotech companies developed a compound based upon this patent which is now widely available for biomedical research, the record did not include additional supporting evidence on this matter.

In addition, in response to our RFE, the Petitioner submitted evidence that the Beneficiary's published scientific journal articles have been cited on hundreds of occasions by other researchers. While this evidence demonstrates that the Beneficiary's work in the field of biochemistry and, more specifically, neurology, has added to the pool of knowledge in that field, it does not establish that she has made contributions of major significance in the field of public health.

Regarding her original contributions to the field of public health, our RFE specifically requested evidence of the Beneficiary's accomplishments while serving as a study and research coordinator for the Petitioner. The evidence submitted in response indicates that the Beneficiary serves as the

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<sup>1</sup> [https://www.\[REDACTED\]](https://www.[REDACTED])



chairperson for the nation-wide [REDACTED] research project, and in that role has led the development of at least two fact sheets relating to public health issues for health practitioner and public use. In addition, she is listed as one of several contributors in a data book published by the [REDACTED] in 2013 that summarizes this project and its accomplishments. However, the record lacks evidence to demonstrate that these accomplishments have made an impact on the field of public health that is of major significance.

*Evidence of the alien's authorship of published scientific or scholarly articles in the field for which certification is sought, in international professional journals or professional journals with an international circulation. 20 C.F.R. § 656.16(d)(1)(vi)*

The Petitioner submitted evidence of the Beneficiary's authorship of 20 scholarly articles, many of which were published in international professional journals between 1998 and 2009. In his decision, the Director declined to consider this evidence, finding that they were not in the field of public health. On appeal, the Petitioner again emphasizes the relationship between the fields of public health, epidemiology, biochemistry and molecular biology, and asserts that these publications relate directly to her current work in the field of public health. As explained above, after a review of the description of the Beneficiary's current duties, the letters from her current and former colleagues, and the evidence relating to [REDACTED] University's master of public health program, we have determined that this evidence does not support the premise that the Beneficiary's previous accomplishments as a researcher in the area of neurology should be considered in the analysis of her work as a research coordinator in the field of public health.

In addition to the factors considered above, we also note that based upon both the descriptions included in the Petitioner's RFE response and found on the journal publishers' websites, the self-described focus of the journals in which the Beneficiary had her articles published are in the fields of neuroscience, biomedicine and pharmacology, not in public health or epidemiology. While the description of the journal [REDACTED] indicates that it takes a broader approach which includes epidemiological research, it has not been established that the Beneficiary's articles published in that journal or any other relied upon her performance of such research. Therefore, the Petitioner has not established that these articles can be considered in the field in which certification is sought.

Responding to our RFE, the Petitioner submitted evidence that the Beneficiary was a contributor to the [REDACTED] published in [REDACTED] 2013. While this publication is in the area of public health, the record lacks evidence to show that it is an international professional journal or is circulated internationally. We therefore find that the Beneficiary has not met this criterion.

#### D. Widespread Acclaim and International Recognition

Although the record does not establish that the Beneficiary has met at least two of the seven criteria

under 20 C.F.R. § 656.15(d)(1)(i)-(vii), we will examine evidence pertaining to the additional requirement that the Beneficiary show widespread acclaim and international recognition by experts in her field under 20 C.F.R. § 656.15(d)(1). As has already been addressed, for purposes of this analysis, the Beneficiary's field is public health or epidemiology, and only evidence pertaining to her acclaim and recognition in that field will be considered.

The Petitioner has submitted several letters from experts in the field of public health, all of whom are under its employ.<sup>2</sup> [REDACTED] indicates that in her role on the [REDACTED] project, the Beneficiary developed several bilingual health education materials based upon research conducted within the project, including three fact sheets which were disseminated to the general public. She also notes several other roles performed by the Beneficiary within this project, including management of the New York site's social media program, and chairmanship of the nationwide Community Relations Committee. [REDACTED] focuses in his letter on the Beneficiary's contribution to the project through her leadership of the medical technician team responsible for the collection and testing of human biological samples. And as previously referenced, the Petitioner is listed as one of several contributors to the 2013 publication by the [REDACTED] which provides a summary and update of the [REDACTED] project. This evidence shows that the Beneficiary has made important contributions to this large, nation-wide public health study, but does not establish her acclaim beyond the boundaries of the study. We therefore do not find that the Petitioner has demonstrated the Beneficiary's widespread acclaim and international recognition in the field of public health.

### III. CONCLUSION

In considering the totality of the Petitioner's evidence, the documentation submitted establishes that the Beneficiary possesses an advanced degree. However, the Petitioner has not demonstrated that the Beneficiary has met the minimum qualifications for the offered position. In addition, the record does not support a finding that the Beneficiary satisfies at least two of the seven evidentiary criteria at 20 C.F.R. § 656.15(d)(1)(i)-(vii), or that she enjoys widespread acclaim and international recognition from recognized experts in the field for which certification is sought.

**ORDER:** The appeal is dismissed.

Cite as *Matter of A-E-C-O-M-, Inc.*, ID# 824717 (AAO Apr. 10, 2018)

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<sup>2</sup> This does not include the letters from experts in the biomedicine and neurology fields, which will not be considered in this analysis.